



**TOWN OF TEWKSBURY
CONSERVATION COMMISSION
999 Whipple Road
Tewksbury, MA 01876**

Anthony Ippolito, Chairman
Carolina Linder, Vice-Chair
Steve Deackoff, Clerk
Dennis Sheehan
Jonathan Parker

**Meeting Minutes
June 17, 2015**

The meeting was called to order by Anthony Ippolito, Chairman at 7:00 p.m. at the Pike House. In attendance were Carolina Linder, Steve Deackoff, and Dennis Sheehan. Also in attendance was Kyle Boyd, Conservation Agent, and Melissa Johnson, Recording Secretary.

Jonathan Parker was not in attendance.

Approval of Meeting Minutes – May 13, 2015 and June 3, 2015

Mr. Boyd noted that the language “Conservation Fund” should be added to the motion on page 10 of the May 13, 2015 meeting minutes.

MOTION: Ms. Linder made the motion to approve the May 13, 2015 meeting minutes as amended; seconded by Mr. Sheehan and the motion carried 4-0.

MOTION: Ms. Linder made the motion to approve the June 3, 2015 meeting minutes as amended; seconded by Mr. Deackoff and the motion carried 4-0.

A) Notice of Intent, Jack Berube, 60 First Street, Map 81, Lots 167 & 198, DEP #305-989

Mr. Boyd noted that the applicant has requested to continue this matter to July 15, 2015.

MOTION: Mr. Ippolito made the motion to continue, Notice of Intent, Jack Berube, 60 First Street, Map 81, Lots 167 & 198, DEP #305-989 to July 15, 2015 at 7:02 p.m.; seconded by Mr. Sheehan and the motion carried 4-0.

B) Abbreviated Notice of Resource Area Delineation, James Wu, 1201 Main Street, DEP #305-978 (Continued)

Mr. Boyd noted that the applicant has requested to continue this matter to July 15, 2015.

MOTION: Mr. Ippolito made the motion to continue Abbreviated Notice of Resource Area Delineation, James Wu, 1201 Main Street, DEP #305-978 to July 15, 2015 at 7:04 p.m.; seconded by Mr. Deackoff and the motion carried 4-0.

C) Notice of Intent, Marc P. Ginsburg & Sons, Inc., Victor Drive, Map 73, Lot 30, DEP #305-990

Present was the applicant Marc Ginsburg, Jim Hanley of Civil Design Consultants, Dick Cuoco, Attorney Jamie Madea, and Joel Kahn of Equity Alliance.

Mr. Hanley explained that they are present to provide the Commission with a brief update as to the status of this proposal. When the applicant was last before the Commission they had received two review letters from DPW and the Planning Board Consultants that they were still in the process of addressing and the Commission's consultant, Weston & Sampson, concerns had been addressed. Mr. Hanley explained that plans were resubmitted last week and the Town Engineer is in the process of reviewing these plans; his final approval has not yet been received.

Mr. Hanley noted that today he received DEP comments 85 days after having submitted to DEP and they have a little bit of work to do; however, there is not anything that they feel would cause a delay or redesign. Mr. Hanley noted that they will be addressing the letter next week.

Attorney Jamie Madea noted she was Bill Weld's general counsel for environmental affairs; as a result, she has much experience with the government. Attorney Madea noted that it took quite some time for DEP to prepare their response. The applicant is requesting the Commission not make a decision at this time as they are continuing to address items with DEP. Attorney Madea explained that there is a "thing" about having several orders of conditions on one site and the way this is resolved is when a new order of conditions is issued and the appeal period has expired, then you close out the old ones because they are no longer in use. The applicant will apply for a certificate of compliance for the old orders for the work done after he acquired the site. Mr. Ginsburg explained that there is a current order in place on the property from the previous owner that is still in effect today. Attorney Madea explained that because the old order was used to clean up the site this needs a certificate of compliance, but not until the new order is issued.

Mr. Boyd noted that Pam Merrill from DEP also noted this in her review letter. Attorney Madea explained that what Ms. Merrill was referring to is if an order of conditions is appealed; which is inapplicable in this matter. Mr. Ginsburg explained they will simultaneously request the certificate of compliance with the new orders of condition. Mr. Cuoco noted that this needs to be cleared up for financing purposes anyway.

Mr. Boyd suggested the Commission wait until after the applicant has addressed DEP comments to make a decision on this matter.

Ms. Linder noted that a habitat assessment has been requested to be in place. Mr. Hanley noted that Norse Environmental has provided this. Mr. Boyd confirmed this has been provided to the Commission.

Attorney Madea noted that Ms. Merrill also references a vernal pool and explained that under the Wetlands Protection Act it has to be a certified vernal pool to be considered a vernal pool. Ms. Linder noted that a scientist could still go in and find evidence of a viable vernal pool and a potential vernal pool would then become a certified vernal pool. Attorney Madea confirmed this and explained that unless DEP intentionally tries to stop the project to go through the purpose, it is not legally possible to happen now.

Mr. Boyd suggested meeting on the site as DEP has noted that there may have been additional resource areas that were not flagged. Mr. Hanley explained that he is not a wetland scientist; however, his understanding is that there is an existing 12 inch pipe in the ground and the intermittent stream goes through the pipe that is considered bank, including inside the pipe, and they were not aware of this. To Mr. Hanley's knowledge, Norse Environmental has spoken with DEP on this and revised the Notice of Intent to include bank. Attorney Madea noted that there is actually not bank inside the pipe; however, they are willing to go along with what DEP wants.

Mr. Ippolito opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Deackoff made the motion to continue Notice of Intent, Marc P. Ginsburg & Sons, Inc., Victor Drive, Map 73, Lot 30, DEP #305-990 to July 15, 2015 at 7:06 p.m.; seconded by Ms. Linder and the motion carried 4-0.

D) Notice of Intent, New England Power Company, Utility Right of Way, Mass DEP #305-0991

Present was Allary Braitsch of VHB. Ms. Braitsch. Provided the members with a copy of a plan of the site and explained that they are present to respond to comments received from Bill Manuell. Ms. Braitsch noted that they are mostly in agreement with the comments with the exception of a couple of access routes that Mr. Manuell wanted to see switched that cannot be from a construction stand point. These areas are: International Place to Structure 19 on L164 and off the parking lot at Site 14 by Wendy's restaurant. Ms. Braitsch explained that with International place, the geo-boring workers are not going to want to take their equipment out there due to the ledge and the site lines are not

very clear. As a result, they would like to leave as has been presented. Also, for the area off of the parking lot to Site 14 would require additional clearing, as a result, they would like to leave this area as has been presented. Ms. Braitsch noted they have been able to reduce the temporary impacts by switching the dimensions of the road and there is approximately 75,000 square feet of temporary impacts.

Mr. Boyd asked if the modifications that have been made were done based on recommendations and Ms. Braitsch confirmed this.

Ms. Linder asked if the time and location of the mat has been addressed and Ms. Braitsch confirmed this and noted for most areas the mat will be in place for 3 days. Ms. Linder asked if anything is done to restore the area when the mat is removed and Ms. Braitsch explained that they typically address the compaction of the vegetation by raking the area and the vegetation regenerates quickly.

Mr. Ippolito opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Ippolito made the motion to close the public hearing; seconded by Ms. Linder and the motion carried 4-0.

MOTION: Ms. Linder made the motion to approve Notice of Intent, New England Power Company, Utility Right of Way, Mass DEP #305-0991, reference shall be made to plan revised June 16, 2015 as well as the review letters and responses to same; seconded by Mr. Sheehan and the motion carried 4-0.

E) Amendment Request Discussion, Marc Ginsburg, 1438 & 1470 Main Street, DEP #305-980

Present was Jim Hanley, Attorney Jaime Medea of Canon Associates, Marc Ginsburg, Joel Kahn of Equity Alliance, and Dick Cuoco.

Mr. Hanley provided the members with a copy of the plans that were previously approved and explained that the Commission issued an order of conditions on February 25, 2015 and a DEP appeal was received on March 9, 2015. DEP's appeal is based on the check box for bank not being checked and only specified the BVW. The other reason is they did not feel the stream crossing met the new DEP standards. Because of this, an appeal was received and a site walk was performed on April 15, 2015 and an information request was received on April 27, 2015.

Mr. Hanley explained that the changes include a revision to the crossing from a four sided box culvert to an open bottom culvert; which they did not have to do, but it was an attempt to go above and beyond what DEP needed. In addition, they have added additional detail to erosion controls.

Attorney Madea noted that DEP is so short staffed that they had not yet provided their comments for the Commission's hearing when the order of conditions was issued. Had the comments been submitted at the time of the hearing, it is likely that an appeal would not have been issued. Attorney Madea explained that the Commission issued two orders: one under the Wetland Protection Act and one under the local bylaws and DEP has now issued the final superseding order of conditions under the Wetland Protection Act; however, it is "untidy" to have the local Order of conditions under the bylaw be different and it make more sense to have the plans match. Attorney Madea explained that they are requesting to modify the bylaw only and noted that there is nothing left to do under the Wetlands Protection Act. Attorney Madea explained that there is a written policy under the local bylaws illustrating how to modify a plan; however, it is slightly different from DEP's policy on amending plans. DEP amends things with a meeting such as this where it is considered to allow an amendment and then a public notice is put out and at the next meeting the changes are presented for approval. Attorney Madea explained that under the current bylaws, this could all be done tonight; however, they do not want to have a dispute with DEP and are requesting the Commission follow DEP's process for amending/modifying a plan.

Ms. Linder asked if DEP has approved the amendment and Attorney Madea confirmed this and explained that DEP issued a superseding order of conditions and the point is to be consistent with the State Order of Conditions.

Mr. Deackoff asked if this is primarily the stream that is the issue and Attorney Madea confirmed this.

MOTION: Ms. Linder made the motion to Modify/Amend with public notice plans approved under the local bylaw and revised by DEP, Marc Ginsburg, 1438 & 1470 Main Street, DEP #305-980; seconded by Mr. Parker and the motion carried 4-0.

F) Request for Certificate of Compliance, Arlene Menchi, 54 French Street, DEP #305-831

Present was Robert Pace. Mr. Pace explained that they are requesting a certificate of compliance for a replication they had to do as they had infringed upon an under 100 square foot area and have since restored the area. Mr. Pace noted that he has received a letter from Matt Moro and the area has been restored and is vegetated.

Mr. Boyd noted that his biggest concern is the culvert as Mr. Moro had said it was flowing and when he visited the site it was not flowing. Mr. Pace explained that they did not replace the culvert and this is the original culvert that was in place.

Mr. Ippolito noted that he visited the site today with Mr. Boyd and explained that he observed the 12 inch pipe on both sides of the gravel road and there are heavy rocks at both ends of the pipe. When you look towards the home on the left hand side there is a puddle and the water is not moving and to the right there is no water at all. Mr. Ippolito feels that either the pipe collapsed or it is plugged up. Mr. Pace asked if Mr. Ippolito is

referencing the 12 inch pipe under the road and Mr. Ippolito confirmed this. Mr. Boyd noted that this was not the situation when he visited the site over a month ago; however, the water is now no longer flowing.

Mr. Pace requested to continue this matter and to visit the site with Mr. Boyd as he was not aware of the culvert problems until now. Mr. Boyd noted that he will also invite the town engineer to the site visit.

Ms. Linder noted that if the culvert needs to be replaced it should be within DEP standards and asked what was cut. Mr. Hayes explained that someone had put some materials in this area and it was removed resulting in a disturbance.

MOTION: Mr. Deackoff made motion to continue Request for Certificate of Compliance, Arlene Menchi, 54 French Street, DEP #305-831 to July 15, 2015 at 7:08 p.m.; seconded by Mr. Sheehan and the motion carried 4-0.

New Business

Dog Park

Mr. Ippolito noted that he and Mr. Boyd have been working on a Dog Park at Kennedy Road and Rogers Street where there is a wooded area where the dog park is being proposed. A committee has been established with the Chief of Police, Board of Selectmen, Commission members, Mr. Boyd as well as some others. Mr. Ippolito noted that he has worked on a similar project in the past. There will be 2 areas for dogs: a small dog area and a large dog area. Mr. Ippolito noted that there is a residential area along Kennedy Road and there will be a need for parking, lights, fences, barrels, etc. Mr. Ippolito feels there will be some residential concerns and feedback. The grant for the dog park is approximately \$250,000. Mr. Deackoff asked if some of the money can be set aside for future maintenance and Mr. Boyd explained that the hope is to utilize the dog license fees for future maintenance. Mr. Sheehan asked how large of an area the dog park will be and Mr. Boyd noted $\frac{3}{4}$ of an acre. A public hearing on the matter will be held on June 25, 2015 at the senior center.

Old Business

Land Donation adjacent to 2000 Whipple Road

Mr. Boyd provided copy of final deed for 4 very small parcels located along the river. The Shawsheen Watershed Association was kind enough to donate the parcels and requested the Commission act on the deed.

Mr. Deackoff noted that the deed states the "...shall remain in its natural state in perpetuity for the scenic enjoyments of the inhabitants of the Town." Mr. Deackoff noted that this language may not allow for the boat launch. Mr. Boyd noted that he can check with Town Counsel on this language. Ms. Linder noted that this may not be an issue as it only applies to these four parcels.

MOTION: Mr. Deackoff made the motion to accept the land donation from Shawsheen Watershed Association shown as lots 5, 6, 7 & 8 on plan of land entitled “Shawsheen River Park”; seconded by Ms. Linder and the motion carried 4-0.

Open Space & Recreation Plan

Mr. Boyd asked if anyone is interested in potentially reopening the Open Space Committee as the Commission has been requested to take over the updating of the Open Space Plan that expires this year. Possibly hold a forum to obtain feedback for the Plan.

Mr. Ippolito, Mr. Deackoff, and Ms. Linder volunteered to participate on the Open Space Committee along with Mr. Boyd. Mr. Boyd noted that any members interested in participating are more than welcome to.

MOTION: Mr. Ippolito made the motion to reactivate the Open Space & Recreation Committee with Mr. Ippolito serving as Chairman, and Ms. Linder and Mr. Deackoff serving as members; seconded by Ms. Linder and the motion carried 4-0.

Adjourn.

MOTION: Mr. Deackoff made the motion to adjourn; seconded by Mr. Sheehan and the motion carried 4-0.

Approved: 7/15/15

List of documents for 6/17/15 Agenda
Documents can be located at the Community Development Office

Approval of Meeting Minutes-May 13, 2015
Approval of Meeting Minutes- June 3, 2015

7:02 P.M Notice of Intent, Jack Berube, 60 First Street, Maps 81 Lots 167 & 198, DEP # 305-989

- *Site Plan submitted by Cyprus Design Inc. dated March 27, 2015*
- *Notice of Intent Form 3 submitted by Jack Berube*
- *Stormwater Forms dated May 29, 2015*
- *Replication Plan from Basbanes Wetland Consulting dated May 4, 2015*

7:04 P.M Abbreviated Notice of Resource Area Delineation, James Wu, 1201 Main Street, DEP # 305-978
(Continued)

- *Review Letter from Mel Higgins dated Dec 8., 2014*
- *ANRAD application dated Nov. 21, 2014*
- *Existing Conditions Plan submitted by Otte, Dwyer, with markups by Weston & Sampson*
- *Review letter from Mel Higgins dated Dec. 15, 2015*
- *Mel Higgins Amended Existing Conditions Plan*

7:06 P.M Notice of Intent, Marc P Ginsburg & Sons, INC., Victor Drive, Map 73 Lot 20, DEP #305-990

- *Review letter from Mel Higgins dated March 18, 2015*
- *Notice of Intent submitted by Norse Environmental dated March 2015*
- *Proposed Riverfront Impact Assessment submitted by Jim Hanley dated March 4, 2015*
- *Existing Riverfront assessment submitted by Jim Hanley dated March 4, 2015*
- *Site development plans dated March 4, 2015 submitted by Civil Design Consultants*
- *Wildlife Habitat Evaluation submitted by Norse Environmental dated June 3, 2015*
- *Review letter from Weston & Sampson signed by Mel Higgins dated June 1, 2015*
- *Abridged Site Development Plans submitted by James Hanley dated May 29, 2015*
- *Response letter from Jim Hanley dated May 27, 2015*
- *Review letter from Town Engineer Kevin Hardiman dated May 14, 2015*

7:07 P.M Notice of Intent, New England Power Company, Utility Right of Way, Mass DEP #305-991

- *New England Power Company Notice of Intent Packet dated*

7:09 P.M Amendment Request Discussion, Marc Ginsburg, 1438 & 1470 Main Street, DEP # 305-980

7:08 P.M Request for Certificate of Compliance, Arlene Menchi, 54 French Street, DEP 305-831

- *WPA Form 8A*

New Business

- **Land Donation adjacent to 2000 Whipple Road**
- **Open Space & Recreation Plan**